

UNDERSTANDING SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE

Alternative Law Forum

Sexual harassment in the workplace has been recognized as a form of workplace violence that compromises the quality of life. It is an assault on dignity and has far-reaching implications on the working conditions and human rights of millions across the world.

As behavior, culture and habitual expression, sexual harassment is entrenched within all social institutions. The existence and extent of sexual harassment in the workplace, up until now, have had a very limited discourse. With a history and understanding as a discriminatory practice, sexual harassment manifests in the social world in a variety of ways.

A history well described by Yale scholar Reva Siegel states that the practice of sexual harassment (defined as unwanted sexual relations imposed by superiors on subordinates at work) is centuries old. Sexual coercion was an entrenched feature of chattel slavery endured by indentured women without protection of law. Within the domestic context, the underpinnings of caste oppression doubly marginalized women at work through the every historical period and much of that reality remains even now, in spite of the #metoo wave.

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The foundation for sexual harassment law in India is the Supreme Court's 1997 Vishaka judgement. It is an important case in its facts because of the role caste and gender plays in the unceasing oppression of working women. Unprecedented on several counts, the judgement was the first authoritative decision of 'sexual harassment' realizing the possibility of 'judicial legislation'.

The judgement included a set of guidelines as forming the semblance of both a process and redressal for sexual harassment. Vishaka was also an important iteration of the Indian's Courts' deference to International Human Rights Law. The judgement

references General Recommendation 19 to the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and International Labour Convention on Discrimination (Employment and Occupation) Convention (No. C111).

In a wretched irony, the original complainant in the case, who survived a brutal gang rape by upper caste men because she tried to prevent child marriage as part of her duties as a worker of the Women Development Programme, lost her own case against her assailants. All of them were acquitted. The outcome is telling of process that realizes legislation but loses justice.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, ("Sexual Harassment Act") was passed on April 23, 2013. The Law replaced the Vishaka guidelines 16 years after they were set down. The Act recognizes that sexual harassment constitutes a violation of fundamental rights of women and their right to life and to live with dignity and carry on any profession, trade, or business in an environment free from sexual harassment. The definition of sexual harassment in the Sexual Harassment Act is in line with the Supreme Court's definition in the Vishaka Judgment and includes any unwelcome sexually determined behavior (whether directly or by implication) such as physical contact and advances, demand or request for sexual favours, sexually colored remarks, showing pornography, or any other unwelcome physical verbal or non-verbal conduct of sexual nature. The law provides a framework for reporting, redressal committees, interim reliefs and the process for complaint and inquiry. The law in its current form is gender specific towards victims who identify as female.

Duty bearers within the Act are predominately employers. Employers are expected to abide by the Act's provisions on the creation of an Internal Complaints Committee. It is this authority that receives and investigates complaints. In case there are fewer than 10 employees in a company, or if the act of sexual harassment has been conducted by the employer himself, the victim must approach the State Local Complaints Committee, which must be constituted in every district by the State Government, or contact the local police station. In theory, the Act provides for a time-bound approach to the process of inquiry and conciliation, where once the committee receives the complaint, they must complete inquiry into the same within 90 days and submit a final report to Employer or District Officer (as the case may be) within ten days thereafter.

“HOSTILE WORK ENVIRONMENT REMAINS A REALITY FOR WOMEN IN ALL SECTORS OF EMPLOYMENT.”

The Act aligns itself with labour rights conceptualization of ‘world of work’ (an extended workplace), which attempts to consider not only the traditional physical workplace, but other aspects of both the physical and physiological ‘spaces’ of work. A comprehensive approach as recommended by the International Labour Organization includes a wide range of work spaces

including technology such as the internet as a ‘venue’ but also including commuting to and from work, work-related social events, public spaces for informal workers. Through the realization of legislation, Internal Complaints Committees have been set up, but there is a question of whether that impacts and actual reduction in the incidence of sexual harassment. The implementations of the Act has become its most critical test for success as both a means of redressal for women who face sexual harassment but also to provide an insight into the contributing social practices that embolden abuse within work sectors.

In education and science a key aspect is gender based discrimination amounting to harassment, which is often under reported or not reported at all. This type of behavior conveys the impression that women do not belong in the workplace or do not merit respect manifesting in ‘put-downs, demotions and isolation’. In a report that examines the issue of sexual harassment in amongst medical and engineering students, 19% more women than men were aware of the different behaviors which can constitute sexual harassment. 70% of that same sample size of men believed that women are responsible for their harassment.

Early advocates Mackinnon and Farley shed some light into the still current realities of gender, sex and labour dynamics. It has been understood the sexual coercion women encountered at work is part of the larger political economy of heterosexuality, a social order that institutionalizes sexual relations between men and women in relations of economic dependency between men and women, an order in which patriarchy and market play reinforcing roles in the reproduction of women's social subordination.

During the surge of global conversations around sexual harassment, work place violence, and gender based discrimination, what is evident is that hostile work environment remains a reality for women in all sectors of employment.

Empirical data has consistently demonstrated that the most vulnerable women has those community populations that endure social isolation and marginalized as a part of their daily existence. Women belonging to lower castes, regardless of their elevation in employment or education, are routinely subjected to conceding their bodies and their agency. If we are to address the problem comprehensively, then the inclusion of the caste and class narrative is imperative. An engagement with the issue of sexual harassment has expanded questions of gender, caste and equality. It demands that the paradigm of productivity that is driven fundamentally by degrees of harassment is questioned. It also raises questions of relations and how we must consciously examine our roles as well as our privileges as passive facilitators to hostile work environments.

¹Vishakha and others v State of Rajasthan

²International Labour Conference, 107th Session, 2018, Report V(1)

³Gender differences in perception of workplace sexual harassment among future professionals

⁴Farley, supra note 7, at 49 (“Depression of female earning power reinforces the domestic division of labor, which in turn reinforces job segregation, which in its own turn reinforces depressed female wages”).